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United States Attorney
District of Massachusetts

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U.S. DISTRICT COURT
DISTRICT OF MASS.

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Federal Building & Courthouse
Main Street, Room 310
Springfield, Massachusetts 01103

August 22, 2005

William J. O'Neil, Esq.
7 Stockbridge Street
Springfield, MA 01103

By Fax to 746-4069 and mail

Re: United States v. Lee Henry
Criminal Nos. 05-30010-MAP; and 05-30011-MAP

Dear Attorney O'Neil:

In response to your August 17, 2005 discovery letter, and our telephone conversations of today, I am providing you with the following response. FBI SSA Michael O'Reilly will be out of the area on business between August 22, and August 26, 2005 and therefore unavailable for the suppression hearing on August 24, 2005.

Further, the so-called Touhy regulations, 28 CFR § 16.23(c) states, in pertinent part

If oral testimony is sought by a demand in a case ... in which the United States is a party, an affidavit, or, if that is not feasible, a statement by the party seeking the testimony or by the party's attorney setting forth a summary of the testimony sought must be furnished to the Department attorney handling the case or matter.

These regulations are promulgated under 5 U.S.C. § 301 and were upheld in United States ex rel. Touhy v. Ragen, 340 U.S. 462 (1951). While the regulations do not create any new privileges or impediments to the appropriate disclosure of information by Department law enforcement agencies, they do impose procedural

requirements on those seeking information from federal employees. Of course, once we receive your affidavit summarizing the testimony sought and explaining its relevance, I will do my best to expedite the internal agency review process so that SSA O'Reilly may be scheduled to testify.

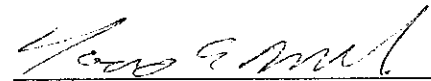
Please provide me the relevant information at your earliest convenience in order that I can determine whether the proposed testimony is relevant or if I need to file a motion to quash pursuant to § 16.21 et seq.

Please feel free to call me at (413) 785-0235 if you have any questions about the above information.

Very truly yours,

MICHAEL J. SULLIVAN
United States Attorney

By:


TODD E. NEWHOUSE
Assistant U.S. Attorney

Enclosures

cc: ✓ Bethany Healy,
Courtroom Clerk
Hon. Kenneth P. Neiman
United States Magistrate Judge
(w/o enclosures);